

1986

Utah County, a body corporate and politic, and Pleasant Grove City Corporation v. The Wasatch Bank of Pleasant Grove : Brief of Respondent

Utah Supreme Court

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BRIEF

UTAH
DOCUMENT
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IN THE SUPREME COURT OF THE STATE OF UTAH

110

CKET NO. **860188-CA**

UTAH COUNTY, a body corporate :
and politic, and PLEASANT
GROVE CITY CORPORATION, :

860188-CA

Plaintiffs-Respondents, :

vs. : CASE NO. 860191

THE WASATCH BANK OF :
PLEASANT GROVE, : Category No. 13-b

Defendant and Third-
Party Plaintiff- :
Appellant, :

vs. :

RAY W. LAMOREAUX, an :
Individual, :

Third-Party Defendant- :
Respondent. :

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH
HON. J. ROBERT BULLOCK, JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

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GROVE CITY CORPORATION, :

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RAY W. LAMOREAUX, an :
Individual, :
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Respondent. :

ISSUE PRESENTED FOR REVIEW

The trial Court determined by substantial, competent and admissible evidence that there was a valid and binding written escrow agreement established to assure that the improvements of Manila Meadows Subdivision be installed according to Utah County standards. At issue is whether the Court is precluded from disturbing that finding.

NATURE OF THE CASE

This is an action to enforce a bond escrow agreement among Wasatch Bank of Pleasant Grove ("Bank"), Ray L. Construction Company, and Utah County under which the County asserts the Bank was to hold certain moneys in escrow to guarantee the installation of improvements in the Manila Meadow Subdivision.

DISPOSITION IN LOWER COURT

The action was tried in the Fourth Judicial District before Judge J. Robert Bullock without a jury. The Court found that Wasatch Bank of Pleasant Grove, Utah County and Ray L. Construction, Inc. entered into a valid and binding written escrow agreement with a face amount of \$20,000.00 to assure that the improvements of Manila Meadows Subdivision would be installed according to Utah County standards. The Court concluded that the Bank breached the escrow agreement and its fiduciary duty to Utah County by applying the escrowed funds to an indebtedness other than provided for in the agreement.

The Court found that Utah County was entitled to judgment against the Bank in the amount of \$26,680.36. The Court denied the Bank's Motion to Amend the Findings of Fact and to Make Additional Findings of Fact and Objections to Findings of Fact, and also denied the Bank's Motion for a New Trial.

STATEMENT OF THE FACTS

On March 9, 1979, the Wasatch Bank of Pleasant Grove and Ray L. Construction executed a bond escrow agreement with a face amount of \$20,000 to assure that the improvements of Manila Meadows Subdivision would be installed according to Utah County standards. Manila Meadows Subdivision was then located in the unincorporated area of Utah County, Utah. The bond was executed by Carl Carnesecca, Executive Vice President of the Bank, who also affixed its corporate seal (Ex. 1). The standard form agreement was provided by Utah County and all blanks were filled in by the Bank (R. 210). The developer, pursuant to the terms of

the bond escrow agreement, assigned a savings certificate as a security for the bond on 9 March 1979 (Ex. 13). The Bank was authorized to use Savings Certificate No. 2900 1187 as the bond. (R. 212; Ex. 13). Based upon the representation that the bond monies had been deposited to "the sole and exclusive use of Utah County," the County passed a resolution dated 14 March 1979 authorizing the Utah County Commission to execute the bond escrow agreement, which it did (Ex. 2). The Utah County Engineer recorded the plat once he had guaranteed that the bond escrow account had been established and Commission approval had been received. (R. 176)

Subsequent thereto on 9 January 1981 the subject property was sold to Mr. Myron Childs (R. 66). Mr. Childs assumed the obligation to place the improvements on the property and recognized the existence and purpose of the \$20,000 improvement bond (R. 85).

The subject subdivision was annexed into the City of Pleasant Grove and on 17 March 1982, Mr. John Backlund, Attorney for City of Pleasant Grove, sent a letter to Mr. Clyde Naylor, Utah County Engineer, inquiring relative to the status of the improvements and the bond (Ex. 5). Mr. Clyde Naylor then called Mr. Carl Carnesecca, Executive Vice-President of the Bank and a signer of the bond escrow agreement, on 20 March 1982. Utah County was advised that the bond for Manila Meadows Subdivision was on account, the bond was still in effect and that claim could be made on it. The Bank further confirmed that the \$20,000 could be used for improvements (R. 183). As evidence of this

conversation, Utah County submitted as Exhibit 6 a letter from Mr. Naylor back to John C. Backlund confirming his conversation with the Bank and the availability of the funds. Just three weeks later, on 13 April 1982, all of the funds were unilaterally diverted to the benefit of the Bank to retire debt not associated with the Manila Meadows Subdivision. On 19 April 1982 the Utah County Engineer sent a demand letter to the Bank for the balance of the bond escrow account (Plaintiff Ex. 7).

Mr. Carnesecca, upon receipt of the demand letter, recognized that he had improperly diverted the subject funds and thought he might lose his job (R. 315). He then obtained from Mr. Childs, the new purchaser of the subdivision, a deed of trust with a face amount of \$20,000 wherein the Bank was the beneficiary and the trustee (Plaintiff Ex. 14). While it bears the date of 23 April 1981, testimony shows that it was deliberately and falsely backdated by one year by the Executive Vice President of the Bank, Mr. Carl A. Carnesecca (R. 273, 274) and by Jane Miner, a Bank official. This deed, which acted as substitute collateral for the bond escrow funds which had been diverted, was recorded on 7 May 1982 (R. 87).

On that same day, the Bank responded to the County's demand letter for the bond escrow funds with a letter which stated that the Bank could not release the funds because of a bankruptcy. The fact was that the funds had already been released prior to the response letter.

At no point in any discussion, letter, or conversation was Utah County ever advised that the Bank deemed the bond escrow agreement to be executory.

Lastly, it is uncontested that as of the date of trial, the estimated cost to complete improvements on the project was \$27,351.00 (R. 188, Plaintiff's Exhibit No. 9).

SUMMARY OF ARGUMENTS

There is competent evidence to support the lower Court's findings and judgment and the Supreme Court ought not to substitute its judgment for that of the lower Court.

If the Bank is exonerated from liability on the bond, the taxpayers would be burdened with the costs of a private development.

Upon the release of the bond moneys, the Bank secured a promissory note and deed of trust as substitute collateral. If the Bank is relieved of its obligation on the bond, it would still retain rights under the deed of trust and would be unjustly enriched.

ARGUMENT

POINT I

THERE IS SUBSTANTIAL EVIDENCE
IN THE RECORD TO SUPPORT THE
COURT'S FINDINGS.

Utah County does not take issue with the principles and law advanced in Bank's Argument I, only with counsel's construction of and applicability of the law as it relates to the facts established in this case.

The trial Court found that a valid and binding written escrow agreement with a face amount of \$20,000.00 was entered into in 1979 to assure that the improvements of Manila Meadows Subdivision be installed according to Utah County standards

(Findings No. 1). In addition, the Court found that the Bank breached the escrow agreement and its fiduciary duty to Utah County by applying the escrowed funds to an indebtedness of Ray L. Construction, Inc., a corporation (Findings No. 6).

The well-accepted standard of review is that the Supreme Court will not upset a finding if there is any reasonable basis in evidence to sustain it. Christopher v. Larson Ford Sales, Inc., 557 P.2d 1009. Where there is competent evidence to support the finding, the Supreme Court cannot substitute its judgment for that of the lower Court even if it disagrees with the finding of the lower Court. Flynn v. Schocker Const. Co., Utah, 459 P.2d 433 (1969); Pitcher v. Laritzen, Utah, 423 P.2d 491 (1967).

The Court has further enunciated that in such cases it will view all evidence and all inferences that can reasonably be drawn therefrom in a light most supportive of the trial Court's findings and that it indulges the findings and judgment of the trial Court with a presumption of validity and correctness. Horton v. Horton, Utah, 695 P.2d 102 (1984); George v. Peterson, Utah, 671 P.2d 208 (1983); Kinkella v. Baugh, Utah, 660 P.2d 233 (1983); Reimchissel v. Russell, Utah, 649 P.2d 26 (1982); Kohler v. Garden City, Utah, 639 P.2d 162 (1981).

There is competent, uncontested and irrefutable record evidence to support the findings and the judgment of the trial Court. Consider the following evidentiary support for the Court's findings:

BOND ESCROW AGREEMENT (\$20,000 bond
executed by Bank. Bank affixes

9 March 1979

corporate seal.)(R. 168 Plaintiff's Exhibit No. 1). The bond was delivered to Utah County.

ASSIGNMENT OF SAVINGS CERTIFICATE - as a security for the \$20,000 bond the Bank was authorized to use savings certificate No. 29001187 for Manila Meadows Subdivision. The savings certificate was assigned and transferred to the Bank as security for the Bond. (Plaintiff's Exhibit 13, R. 211.)

9 March 1979

RESOLUTION: A resolution was passed by the Board of Utah County Commissioners authorizing the Commission to endorse the Bank Escrow Agreement. After endorsement, the document was redelivered to the Developer. (Plaintiff's Exhibit 2, (R. 172-173.)

14 March 1979

SALE OF PROPERTY

by Ray W. Lamoreaux to Myron Childs (Defendant's Exhibit 15, R. 234.)

9 January 1981

LETTER to Clyde Naylor, Utah County Engineer, from John Backlund, Pleasant Grove City Attorney
re: status report of Manila Meadows Subdivision development and bond status. (Plaintiff's Exhibit No. 5, R. 181.)

17 March 1982

CONVERSATION

Mr. Naylor spoke with Mr. Carnesecca of the Bank and was advised improvement bond for Manila Meadows was current, confirmed amount of \$20,000 - and that the proceeds could be used for improvements. (emphasis added)(R. 181, 182, 183).

20 March 1982

LETTER from Clyde Naylor to John C. Backlund - confirming conversation with Bank. (Plaintiff's Exhibit No. 6, R. 184.)

23 March 1982

WASATCH BANK RELEASES FUNDS - The savings certificate assigned as a security on the bond was diverted to retire additional debt not associated with Manila Meadows Subdivision. This release was contrary to the terms and conditions of the bond agreement. (R. 260-261.)

13 April 1982

DEMAND LETTER from Mr. Clyde Naylor to Wasatch Bank for balance of escrow account pursuant to the terms of the bond agreement. (Plaintiff's Exhibit No. 7, R. 185.) 19 April 1982

TRUST DEED - while it bears a date of 23 April 1981, actually it was executed on 23 April 1982 23 April 1982
Wasatch Bank - Beneficiary and Trustee
Myron Childs - Trustor
Notarized by Carl A. Carnesecca
Recorded 7 May 1982
Face Amount: \$20,000
Property: All of Lots 1-25, except 7 of Manila Meadows Subdivision
(Exhibit No. 32, R. 266.)

LETTER to Mr. Naylor from Wasatch Bank - the letter stated that the funds could not be released because of a pending bankruptcy. The letter was sent even though the funds had been previously released. (Plaintiff's Exhibit No. 8, R. 186.) 7 May 1982

SUIT initiated by Utah County 17 July 1982

UTAH COUNTY did not learn until after suit had been filed that all of the bond proceeds had been otherwise disbursed.

To refute this evidence and to attempt to show that the bond escrow agreement was executory, the Bank only called one witness, Jane Miner, a Bank official. On cross examination the Bank's only witness admitted that she had no personal knowledge of the bond escrow agreement until three years after it had been executed, and further she had no personal knowledge of what documents had been delivered to the Bank in 1979 (R. 275).

In addition, and far more damaging, the Bank's only witness admitted that she knowingly participated with the executive vice president of the Bank in falsifying documents crucial to this case (R. 272-274).

The credibility and reliability of the Bank's only witness was marred by these disclosures.

The evidence was substantial, competent and admissible. The Bank executed a bond escrow agreement, affixed its seal and deposited escrow moneys from the developer who intended the moneys to act as a bond to install the improvements in the Manila Meadows Subdivision. Subsequent to the execution of the bond escrow agreement, the Bank assured the County that the funds were on deposit and could be used for the improvements of Manila Meadows Subdivision.

The Bank's contention that the bond escrow agreement was never communicated to the Bank pales in light of the facts. At no time did the Bank ever advise Utah County that it considered the bond escrow agreement to be executory and the Bank ought to be estopped from so claiming now. Even in the Bank's written response to Utah County's written demand for the balance of account no mention of this contention was made.

The money was on account for approximately three years. The Bank, within ten days of diverting the money, prepared a promissory note and deed of trust in the same amount, \$20,000.00, as a substitute for the released funds. Certainly, the Court could reasonably infer from that action that the Bank recognized its obligation under the bond escrow agreement. The bond was established to protect the taxpayers of Utah County.

POINT II

DEFENDANT BANK CANNOT BE
EXONERATED FROM LIABILITY ON
A PERFORMANCE BOND FURNISHED
TO SECURE DEVELOPER'S INSTAL-
LATION OF IMPROVEMENTS.

As pointed out in Pacific County v. Sherwood Pacific, Inc., Wash. 567 P.2d 642 (1977), the true beneficiaries of a county's duty to collect upon performance bonds furnished to secure the developer's installation of roads in development and to complete improvements are the members of the public in general and directly affected property owners who purchased in reliance upon approved plat and who had a distinct interest in the construction of serviceable roads. U.C.A., 1953, sec. 57-5-4, provides that the recording of a subdivision plat operates as a dedication of all streets shown thereon to public use.

It is uncontested that the plat for Manila Meadows Subdivision was recorded by Clyde R. Naylor, Utah County Engineer, after he was satisfied with the bond. Utah County was diligent in its duty in monitoring the placement of improvements in the subdivision. At such time as the developer failed to proceed to install or cause to be installed the improvements, Utah County approached the Bank respecting the bond in order to fulfill its duty to act to bring about the completion of those improvements.

This Court recently ruled in Cox v. Utah Mortgage, et al., Utah, 716 P.2d 783, 786, 787 (1986), that a governmental entity has a duty to enforce a bond and does not have the right to indefinitely sit back, refuse to act, and deny to the lot owners

the benefit and protection of the improvement contract and the escrow of funds. Utah County recognized that duty and sought nothing more than to receive the funds deposited in escrow to its sole credit in order to complete improvements in the Manila Meadows Subdivision as originally contemplated.

The taxpayers ought not be burdened with the costs of the improvements of a private development.

POINT III

THE BANK HAS A SECURED INTEREST
IN THE DEVELOPMENT AND WOULD BE
UNJUSTLY ENRICHED IF THE PER-
FORMANCE BOND IS INVALIDATED.

The trial Court found that on or about the 13th day of April, 1982, that all the proceeds in the bond escrow account which had been deposited to the sole credit of Utah County, were applied to unrelated indebtedness of Ray L. Construction, Inc., a corporation (Findings No. 5). The true beneficiary of the disbursement was the Bank who satisfied a delinquent account.

When the Bank secured a deed of trust on the subject property as substitute collateral several days later, it doubly protected its interest. The Bank may choose, but has not yet done so, to foreclose on the deed of trust.

If the taxpayers are burdened with the cost to place the improvements in the subdivision, the Bank's remedy against the property would still survive. In said event, it may end up with a tidy \$20,000.00 profit without ever having performed any service or without having installed any improvements.

The Bank would be unjustly enriched at taxpayers' expense if, as the Bank urges, the decision of the trial Court is reversed.

CONCLUSION

Utah County, in response to Bank's Point III, concedes that there was an inadvertent clerical error in the amount of costs. Utah County stipulates that the judgment may be so corrected pursuant to Rule 60(a) of the Utah Rules of Civil Procedure.

The lower Court made no error in applying the law in this case. It properly found that the parties entered into a valid and binding bond escrow agreement to insure the installation of improvements in the Manila Meadows Subdivision. It properly found that the Bank breached the agreement by applying the escrowed funds to unrelated indebtedness and that Utah County was, therefore, entitled to damages.

There is undisputed testimony which supports the Court's determination. The Bank's argument that the agreement is executory is ill-founded, is not supported by the evidence and is premised upon the testimony of a witness who admittedly had no personal knowledge of the initial transaction and who admitted falsifying documents in this case.

Utah County urges that the findings and judgment not be

disturbed in that they are based on substantial, competent, and admissible evidence.

RESPECTFULLY SUBMITTED this 23 day of October, 1986.

NOALL T. WOOTTON
Utah County Attorney



LYNN W. DAVIS
Deputy County Attorney

MAILING CERTIFICATE

I hereby certify that four (4) true and correct copies of the foregoing were hand delivered or mailed to each of the following, postage prepaid, this 23 day of October, 1986:

S. Rex Lewis
Howard, Lewis & Petersen
Attorneys for Defendant-Appellant
120 East 300 North
Provo, Utah 84601

Mark K. Stringer
Attorney for the Third-Party
Defendant-Respondent
256 North Main Street
Alpine, Utah 84003

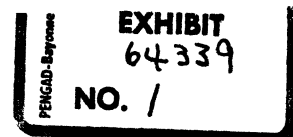


LYNN W. DAVIS

ADDENDUM

Bond Escrow Agreement	Plaintiff's Exhibit No. 1
County Commission Resolution	Plaintiff's Exhibit No. 2
Letter to Utah County Engineer from Pleasant Grove City Attorney	Plaintiff's Exhibit No. 5
Response Letter	Plaintiff's Exhibit No. 6
Demand Letter to Bank	Plaintiff's Exhibit No. 7
Response Letter from Bank	Plaintiff's Exhibit No. 8

BOND ESCROW AGREEMENT



Name of Development Manila Meadows Subdivision
Location Manila, Utah (RFD-Pleasant Grove) 256 West 83rd North
Name of Developer Ray L. Construction
Address 172 West Main Street, American Fork Phone No. 756-9669
Bond Escrow Agent Wasatch Bank of Pleasant Grove
Address 225 South Main Pleasant Grove, Utah 84062 Phone No. 785-5001

THIS AGREEMENT made and entered into this 9th day of March 19 79
by and between Utah County of the State of Utah, hereinafter called "Utah County",
and Wasatch Bank of Pleasant Grove hereinafter called "Escrow Agent", and
Ray L. Construction hereinafter called "Developer."

WHEREAS, Developer, desires to construct the above-named development within
Utah County, and,

WHEREAS, incident to said development, the improvements described on the attached
Exhibit "A" which is made a part hereto by this reference are to be installed at the
expense of the Developer, and,

WHEREAS, Utah County has required that the Developer post a bond assuring that
the improvements described on Exhibit "A" will be completely installed according to
Utah County development standards.

NOW, THEREFORE, in consideration of the following mutual promises and covenants,
it is agreed by the parties as follows:

1. The Developer has deposited with the Escrow Agent, to the sole credit of
Utah County, the sum of \$20,000.00 as a bond and assurance that the improvements
described on Exhibit "A" will be completed according to Utah County development standards.
2. The Escrow Agent shall not release, give or disburse said deposits or any
part thereof except pursuant to the terms and conditions of this agreement.
3. The Developer shall be entitled to withdraw from the Escrow Agent, periodic
completion payments for the improvements described in Exhibit "A", calculated on percent
of completion less 10%. Percent of completion shall be calculated by the Utah County
Surveyor based upon such inspection as he deems appropriate and based upon actual in-
voices and other documentation as he deems appropriate. Withdrawals from the Escrow
Agent shall be permitted only upon presentation to the Escrow Agent of a written invoice
or other document, bearing the signature of the Utah County Surveyor or his deputy en-
dorsed thereon. Engineering costs for any improvement shall be withdrawn on a percentage
basis equal to the percent of completion of the specific improvement to which the engineer-
ing cost relates.
4. Said retained 10% shall be a deposit for the repair of defects in design,
workmanship or materials in the improvements described in Exhibit "A". The 10% re-
tained by this agreement shall not be deemed to be a waiver by Utah County or any other
or further claims for defective design, workmanship or materials.

be raised with respect to the improvements on Exhibit "A". This agreement is not intended and shall not be construed, to make any person, firm or corporation a third party beneficiary of any duty to be performed under this agreement by Utah County, the Utah County Surveyor, or their agents or employees.

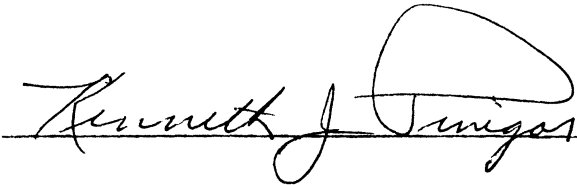
5. One year from the date of issuance of a certificate of final acceptance by the Utah County Surveyor, or two years from the date of this agreement if a certificate of final acceptance has not been issued, whichever occurs first, the Utah County Surveyor shall, in the event the improvements described in Exhibit "A" have not been fully completed according to Utah County standards, apply to in writing and receive from the Escrow Agent the balance of the Escrow Account which shall be paid by the Escrow Agent to the order of Utah County to be applied by Utah County for completion of the improvements on Exhibit "A".


6. After expiration of one year after issuance of the certificate of final acceptance by the Utah County Surveyor, if the improvements described in Exhibit "A" have been completed according to Utah County standards and have not proved defective during the one year period, the Developer shall be entitled to have the Utah County Surveyor or his Deputy endorse their signature on a document directing the Escrow Agent to release the retained 10% to the Developer or the Developer's assignee.

WITNESS OUR HANDS the date first written above.

UTAH COUNTY COMMISSION

ATTEST:

by 


Deputy Clerk

Title Acting Chairman, Utah County Commission

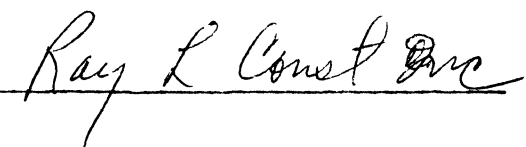
BOND ESCROW AGENT Wasatch Bank of Pl. Grove

225 South Main Pleasant Grove, Utah
84062

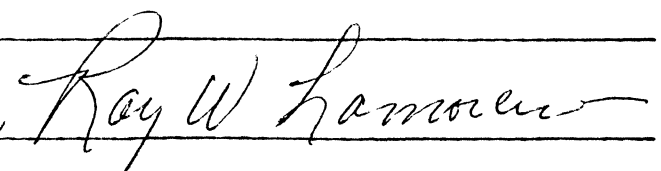
ATTEST:

by 

Title Executive Vice President

DEVELOPER 

ATTEST:

by 

Date MARCH 12, 1979

OFFICE OF THE UTAH COUNTY SURVEYOR

Sheet 1

BONDING FOR IMPROVEMENTS IN UTAH COUNTY DEVELOPMENTS

Name of Project MANILA MEADOWS, PLAT "A" Project No. _____Location NW 1/4 OF SW 1/4 OF SECTION 18 Township 5 South, Range 2 EAST
Subdivision of Section to 1/4, 1/4

ITEM	% TOTAL	No. UNITS	LIN. FT.	SIZE OR WIDTH	SQ. FT	UNIT COST	AMOUNT
Curb and Gutter		1560	1560	24"		4.00	6,240
						7.00	10,920
Sidewalk or Walkways			1560	48"			12,508
							2,500
Grading							2,000
Subgrade Preparation, Materials --							
	2 1/2" BITUMEN						
Roadbase (See Standards)	6" ROAD BASE				36,270	.32	11,606
Bituminous Surfacing							
Water Mains	IN						
Fire Hydrants							
Water Storage, Bldgs, Pumps, Reservoirs, etc.							
Sanitary Sewer	NONE						
Manholes							
Sewage Disposal Facilities							
Storm or Debris Basins							350
SODDING							1,000
Storm Sewer or Drains PIPING							990
TRENCHING & GRAVEL BEDDING							1,960
Manholes, Cleanouts, and Sumps							
Catch Basins and Piping		2				350.00	700
Irrigation Ditch	NONE						
Headgates							
Culvert							
Cross - Gutter			102			5.00	510

DEPOSITION

OFFICE OF THE UTAH COUNTY SURVEYOR

Sheet 2

BONDING FOR IMPROVEMENTS IN UTAH COUNTY DEVELOPMENTS

ITEM	% TOTAL	No UNITS	LIN FT	SIZE OR WIDTH	SQ FT	UNIT COST	AMOUNT
Survey Monuments		5				100.00	500.00
Signs		3				75.00	225.00
Landscaping							
Common Storage Facilities							

Sub-total

34,849.00

Engineering (10% of Sub-total)

3,485.00

Inspection (5% of Sub-total)

1,742.50

Total Amount (Improvements, Engineering, and Inspection)

40,076.50Amount Recommended for Bond \$40,000.00

Prepared by

Clyde A. TaylorCOUNTY ENGINEER

1979-10

RESOLUTION

WHEREAS, MANILA MEADOWS SUBDIVISION, PLAT "A"
has been properly presented by the developer, RAY L.
CONSTRUCTION

and all of the signatures affixed to the certificates except
that of the County Commission for the Certificate of Accep-
tance by a Legislative Body, and

WHEREAS, a good and sufficient cash bond has been
supplied by WASATCH BANK OF PLEASANT GROVE AND BANK OF AMERICAN FORK

in the amount of \$40,000.00, said bond is for the
required improvements connected with said subdivision in the
MANILA area of Utah County.

NOW, THEREFORE, be it resolved by the Board of Utah
County Commissioners in regular meeting assembled this 14th
day of MARCH, 1979, that they do hereby
authorize themselves to sign said certificate and also
authorize Kenneth J. Pinegar, Acting Chairman of the County
Commission to sign the bond agreement in the space provided
for the Utah County Commission and order the same recorded at
the expense of the developer by CLYDE R. NAYLOR,
the Utah County Surveyor and also authorize the County Sur-
veyor to release any and all of said bond when the work is
completed according to the Utah County Standards and to the
satisfaction of the County Surveyor.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF UTAH, STATE OF UTAH

(Excused)

Commissioner,

Kenneth J. Pinegar
Commissioner,

H. Jerry Bradshaw
Commissioner,

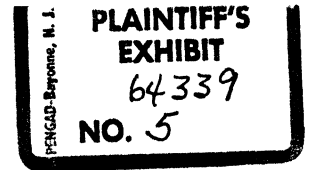


ATTEST:
County Clerk

by: Cheryl Jones
Deputy Clerk

ALLEN K. YOUNG
JOHN C. BACKLUND
LYNN C. HARRIS
SHELDEN R. CARTER

YOUNG, BACKLUND, HARRIS & CARTER
ATTORNEYS AT LAW
350 EAST CENTER
PROVO, UTAH 84601



TELEPHONE 375-9801
AREA CODE 801

March 17, 1982

Clyde Naylor
Utah County Surveyor
Utah County Building
Provo, Utah 84601

RE: Manilla Meadows Subdivision

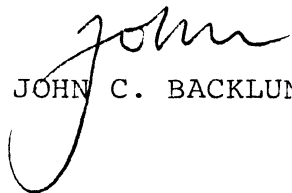
Dear Mr. Naylor:

This letter will serve to confirm our telephone conversation on March 16, 1982 regarding the above matter.

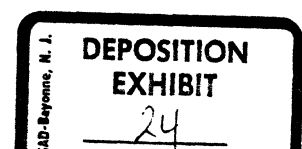
As you know, Manilla Meadows is a subdivision that was originally approved under the Utah County subdivision ordinance. The area was subsequently annexed to Pleasant Grove City. At the present time, the subdivision improvements have not been completed; there is one home in the subdivision and no work has been done on the improvements for a substantial length of time. The concern of Pleasant Grove City is that a lot owner will make application to Pleasant Grove City for a building permit. We are very concerned about the status of the improvement bond at the present time.

Please, if you will, contact the entity that posted the improvement bond in this case and notify us as to the present status of the bond. Your attention to this matter is appreciated.

Very truly yours,


JOHN C. BACKLUND

JCB:mp
cc: Mark H. Johnson



CLYDE R. NAYLOR
Utah County Engineer
HOWARD H. DENTY
Director, Engineering Division
BRYON L. ORTON
Director, Operations Division
JIC OLGROVE
Director, Property Management Division

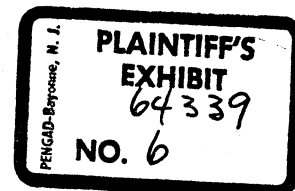


OFFICE OF THE UTAH COUNTY ENGINEER

State of Utah

100 EAST CENTER • PROVO, UTAH 84601 • TELEPHONE 801 373-55

March 23, 1982



John C. Backlund
350 East Center
Provo, Utah 84601

Re: Manila Meadows Subdivision

Dear Mr. Backlund:

The Wasatch Bank of Pleasant Grove have indicated to us that the \$20,000 bond we have on Manila Meadows is still in effect. A copy of the bond is attached.

However, according to the terms of the bond (Paragraph 5), the bond time and a one (1) year extension of the bond time for completing the project expired on March 9, 1982. We intend to ask for the bond to be paid over to Utah County to use to complete the improvements.

Sincerely,

A handwritten signature in cursive script that reads "Clyde R. Naylor".

Clyde R. Naylor
UTAH COUNTY ENGINEER

CRN/vh
Encl/ 1

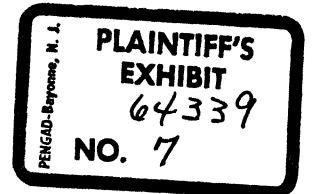
CLYDE R. NAYLOR
Utah County Engineer
160 N. MAIN ST.
PLEASANT GROVE, UTAH 84062
TELEPHONE 801 373 5510



State of Utah

160 N. MAIN ST. • PLEASANT GROVE, UTAH 84062 • TELEPHONE 801 373 5510

April 19, 1982



Wasatch Bank of Pleasant Grove
225 South Main
Pleasant Grove, Utah 84062

Re: Manila Meadows Subdivision

Dear Escrow Agent:

Pursuant to Paragraph 5 of the attached bond, Utah County hereby applies in writing to the bank to receive the balance of the escrow account for said Manila Meadows Subdivision. Please send the funds payable to Utah County.

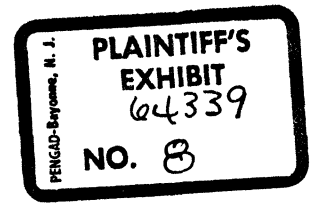
The funds will be used to immediately complete improvements in said Manila Meadows Subdivision as originally contemplated.

Sincerely,

Clyde R. Naylor
UTAH COUNTY ENGINEER

CRN/vh
Encl/ 1

WASATCH BANK
of
PLEASANT GROVE



May 7, 1982

Clyde R. Naylor
Utah County Engineer
160 East Center
Provo, Utah 84601

RE: Manila Meadows Subdivision

Dear Mr. Naylor:

Reference is made to your letter dated April 19, 1982, in which you requested the Bank to forward the balance of the escrow account held on the Manila Meadows Subdivision.

Please be advised that the owners of this project have filed a petition of bankruptcy in the United States District Bankruptcy Court for the State of Utah. As a consequence, we are staid by court order from disbursing any such funds, or for that matter, taking any type of unauthorized action.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carl A. Carnesecca". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Carl A. Carnesecca
Executive Vice President

